

These are the minutes of the regular meeting of the Texas Transportation Commission, which was held on November 15, 2007 in Austin, Texas. The meeting opened at 9:08 a.m. with the following commissioners present:

Texas Transportation Commission:

Ric Williamson	Chair
Ted Houghton, Jr.	Commissioner
Ned Holmes	Commissioner
Fred Underwood	Commissioner

Administrative Staff:

Steve Simmons, Deputy Executive Director
 Bob Jackson, General Counsel
 Roger Polson, Executive Assistant to the Deputy Executive Director
 Dee Hernandez, Chief Minute Order Clerk

Registration sheets listing others in attendance are on file with the Texas Department of Transportation Chief Minute Clerk.

A public notice of this meeting containing all items on the proposed agenda was filed in the Office of the Secretary of State at 5:05 p.m. on November 8, 2007, as required by Chapter 551, of the Government Code, referred to as "The Open Meetings Act."

ITEM 1. Approval of Minutes of the October 25, 2007 regular meeting of the Texas Transportation Commission

Commissioner Houghton made a motion, seconded by Commissioner Underwood, and the commission approved the minutes of the October 25, 2007 regular meeting of the Texas Transportation Commission.

A certificate of service was presented to Nancy Handrick for 35 years of service with the department.

ITEM 2. REPORT

Grand Parkway Association – Annual report on the status of projects and activities undertaken during the preceding 12 months

This report was presented by the Grand Parkway Association Executive Director David Gornet.

ITEM 3. DISCUSSION ITEM

a. Discussion of impacts of near- and mid-term cash flow projections on system operations and resource reallocation

This item was presented by Chief Financial Officer James Bass and Deputy Executive Director Steve Simmons. The commission also received comments from North Central Texas Council of Governments Director of Transportation Michael Morris.

b. Discussion of potential funding options for State Highway 161 project

This was a roundtable discussion that included Commission Chair Ric Williamson, Commissioner Ted Houghton, Commissioner Ned Holmes, Commissioner Fred Underwood, TxDOT General Counsel Bob Jackson, North Central Texas Council of Governments Director of Transportation Michael Morris, North Texas Tollway Authority (NTTA) Executive Director Jorge Figueredo, NTTA General Counsel Frank Stevenson, TxDOT Dallas District Engineer William Hale, and TxDOT Fort Worth District Engineer Maribel Chavez.

ITEM 4. INTERNAL COMPLIANCE PROGRAM

Develop an internal compliance program (MO)

Commissioner Houghton made a motion, seconded by Commissioner Underwood and the commission approved the following minute order presented by Deputy Executive Director Steve Simmons:

111124
OGC

The Texas Department of Transportation (department) has a long standing reputation for integrity and ethical behavior. This reputation is a great source of pride for the department as well as one of the department's greatest assets because it instills the necessary trust and confidence that the public must have in any governmental agency. It is of utmost importance to the Texas Transportation Commission (commission) to continue to be good stewards of the taxpayer resources entrusted to the department.

To maintain and build on the department's commitment to ethical behavior and integrity, the commission desires for the department to develop an internal compliance program (ICP) designed to prevent and detect any future potential risk of noncompliance and to promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law. The ICP should be designed to prevent violations of law and policy from occurring, mitigate the consequences of those violations that do occur, and provide an ethical workforce educated in the laws and policies that govern the department.

IT IS THEREFORE ORDERED by the commission that a department ICP be developed with the mission to exercise due diligence to prevent and detect criminal conduct and otherwise promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law. The ICP will include but not be limited to:

- A written employee code of conduct;
- Identification of business practices that are at risk for violations and plans for mitigation of those risks by implementation of necessary controls;
- Appropriate internal infrastructure and delegation of authority for the management of the ICP;

- Education and training for employees; and
- Internal audit and accountability measures.

IT IS FURTHER ORDERED that the executive director or his designee is directed to take the necessary steps to implement the actions as ordered by this minute order.

IT IS FURTHER ORDERED that the executive director or his designee is directed to provide semiannual reports to the commission of accomplishments, costs and plans for the internal compliance program.

ITEM 5. AVIATION

a. Approve funding for airport improvement projects at various locations (MO)

Commissioner Underwood made a motion, seconded by Commissioner Houghton and the commission approved the following minute order presented by Aviation Division Director Dave Fulton:

111125
AVN

The Texas Department of Transportation (department) is authorized under Transportation Code, Chapter 21 and Chapter 22, to assist in the development and establishment of airports in the State of Texas.

The airports listed in Exhibit A are currently in need of improvements to preserve the airports or to meet standards. Due to the interest on the part of the airport sponsors, the department recommends that the improvements be funded.

On Thursday, October 18, 2007, and Tuesday, October 30, 2007, public hearings were held. No comments were received at either hearing.

IT IS THEREFORE ORDERED by the Texas Transportation Commission that the executive director, or the director's designee, is authorized to enter into any necessary agreements to fund, through the Aviation Facilities Grant Program, the projects described in Exhibit A at an estimated cost of \$24,906,780.

Note: Exhibit A on file with minute order clerk.

Note: The commission received comments on Items 5.a. and b. from Collin County Regional Airport Director Ken Wiegand.

b. Approve the FY 2008-2010 Capital Improvement Program (MO)

Commissioner Underwood made a motion, seconded by Commissioner Houghton and the commission approved the following minute order presented by Aviation Division Director Dave Fulton:

111126
AVN

Pursuant to Transportation Code, §§21.108-21.111 and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation (department) prepares an Aviation Facilities Development Program identifying the aviation facility requirements, locations, timing, eligibility for funding, and the investment necessary for a statewide system of airports that will provide for the state's air transportation needs.

There continues to be a need for the construction, rehabilitation and upgrading of the state airport system.

As an element of the Aviation Facility Development Program, the department is required to prepare and update, at least annually, a multiyear Aviation Capital Improvement Program (CIP) to support aviation facilities development.

In June, the draft FY 2008-2010 Aviation CIP was submitted to the sponsors of airports included in the Texas airport system for review.

The Aviation Advisory Committee recommended approval of the FY 2008-2010 CIP at its August meeting.

Comments received have been evaluated and, when appropriate, have been addressed in the program.

IT IS THEREFORE ORDERED by the commission that the FY 2008-2010 Capital Improvement Program, attached as Exhibit A, is hereby adopted and the executive director is authorized to proceed with the development of the airport facilities included in the program.

Note: Exhibit A on file with minute order clerk.

ITEM 6. PUBLIC TRANSPORTATION

a. Rescind Minute Order 110967, dated June 28, 2007 and award an increased amount of state funds to public transportation providers for FY 2008 (MO)

Commissioner Houghton made a motion, seconded by Commissioner Underwood and the commission approved the following minute order presented by Public Transportation Division Director Eric Gleason:

111127
PTN

The General Appropriations Act enacted by the 80th Texas Legislature, Regular Session, appropriates \$39,817,135 for public transportation grants for small urban and nonurbanized areas of the state.

The Texas Transportation Commission (commission) desires to award \$19,741,068, the appropriated amount for FY 2008.

The commission also desires to award an additional amount of \$8,999,999 to increase the total amount to the level awarded in FY 2007.

On June 28, 2007, the commission adopted Minute Order 110967, awarding \$19,741,068 to public transportation providers.

To clarify the public record, the commission rescinds and withdraws Minute Order 110967, dated June 28, 2007.

Title 43, Texas Administrative Code, §31.11 establishes a formula by which public transportation funds shall be distributed to the small urban and nonurbanized areas of the state. The FY 2008 allocation is shown in Exhibit A and has been calculated in accordance with the provisions of §31.11.

Transportation Code, Chapter 455 assigns a broad spectrum of public transportation roles and missions to the Texas Department of Transportation.

Transportation Code, Chapter 456 authorizes the commission to administer funds appropriated for public transportation.

IT IS THEREFORE ORDERED by the commission that Minute Order 110967, dated June 28, 2007, is rescinded and withdrawn.

IT IS FURTHER ORDERED that the executive director or the director's designee is directed to proceed with the allocations as described in Exhibit A and to enter into the necessary contracts for the FY 2008 program of projects upon completion of all application requirements by the local public transportation operators.

Note: Exhibit A on file with minute order clerk.

Note: The commission received comments from East Texas Council of Governments Director of Transportation Roxanne McKinley and Texas Transit Association General Manager John L. Hendrickson.

b. Various Counties – Award transportation development credits to public transportation agencies for various capital projects (MO)

Commissioner Houghton made a motion, seconded by Commissioner Underwood and the commission approved the following minute order presented by Public Transportation Division Director Eric Gleason:

111128
PTN

The Texas Transportation Commission (commission) desires to award Transportation Development Credits (TDC) to rural and urban public transportation agencies to be used as the local match for various projects.

The commission acknowledges that many public transportation agencies are constrained between the issues of rising costs of providing public transportation services, and limited non-federal funds that may be used as the required local match for federal programs. These factors may lead public transportation agencies to use their non-federal funds for public transportation operating expenses instead of using those funds to match important capital project needs.

The commission further recognizes that state and federal law permits the substitution of TDC as the required non-federal match for capital projects. Title 43, Texas Administrative Code (TAC), §5.73 establishes a process by which TDC may be awarded at the discretion of the commission. The commission finds that the projects and associated distribution of the TDC as shown in Exhibit A have been reviewed to ensure eligibility, overall benefit to public transportation initiatives and ability to further the goals of the department, as outlined in 43 TAC §5.72 (e).

On December 14, 2006, the commission passed Minute Order 110771, expressing its intent to award TDC for projects that promote public transportation: fleet replacement, fleet expansion, maintenance facilities; and capital projects that support regional coordination and further the goals of the department, which are: reduce congestion; expand economic opportunity; enhance safety; improve air quality; and increase the value of transportation assets.

The commission finds that the projects listed in Exhibit A: reduce congestion by improving reliable transit options thereby increasing levels of ridership; expand economic opportunity by increasing the level of service access for the transit dependent populations to jobs and other necessary activities; enhance safety by reducing mechanical breakdowns thereby enhancing safety especially in system environments and types of service where passenger safety is critical such as dialysis transport; improve air quality

by reducing emissions with technological advances in the bus industry; and increase the value of the transportation assets by investing into the replacement of depreciated rolling stock thus yielding savings or efficiencies which can be reinvested into additional trips.

Transportation Code, Chapter 455 assigns a broad spectrum of public transportation roles and missions to the Texas Department of Transportation.

Transportation Code, Chapter 456 authorizes the commission to administer funds appropriated for public transportation.

IT IS THEREFORE ORDERED by the commission that the executive director or the director's designee is directed to proceed with the allocation, as described in Exhibit A, and enter into the necessary contracts in accordance with the priorities established in this minute order.

Note: Exhibit A on file with minute order clerk.

c. Various Counties – Award Federal §5304 funds and state matching funds to Alamo Area Council of Governments, Concho Valley Council of Governments, and South East Texas Regional Planning Commission for transit planning projects (MO)

Commissioner Underwood made a motion, seconded by Commissioner Houghton and the commission approved the following minute order presented by Public Transportation Division Director Eric Gleason:

111129
PTN

The Texas Transportation Commission (commission) takes special note of its designation by the governor as the administering agency for the Federal Transit Administration (FTA) grant program, "State Planning and Research Programs" (49 U.S.C. §5304), in a letter dated October 4, 2005. Under §5304, the FTA provides funds to be used for planning and coordination projects.

The commission desires to award funds to assist the Alamo Area Council of Governments in preparing a business plan for public transportation service in Atascosa, Bandera, Comal, Frio, Gillespie, Guadalupe, Karnes, Kendall, Kerr, Medina, and Wilson counties.

The commission desires to award funds to assist the Concho Valley Council of Governments, operating the Concho Valley Transit District, to evaluate public transportation service in San Angelo.

The commission desires to award funds to assist the South East Texas Regional Planning Commission in preparing a transit development plan for Beaumont Municipal Transit and Port Arthur Transit.

Transportation Code, Chapter 455 requires the Texas Department of Transportation to assist political subdivisions of this state to obtain federal aid to establish or maintain public transportation systems.

Transportation Code, Chapter 456 requires the commission to administer funds appropriated for public transportation.

IT IS THEREFORE ORDERED by the commission that the executive director or the director's designee is directed to proceed with the awards as described in Exhibit A, and enter into any necessary contracts in accordance with the priorities established in this minute order.

Note: Exhibit A on file with minute order clerk.

ITEM 7. TOLL PROJECT

Collin County – Authorize the designation of the mainlanes on SH 121 from the Dallas North Tollway to US 75 as a toll project on the state highway system, and as a controlled-access facility for the purpose of development, maintenance and operation (MO)

Commissioner Houghton made a motion, seconded by Commissioner Underwood and the commission approved the following minute order presented by Texas Turnpike Authority Division Director Phillip Russell:

111130
TTA

In COLLIN COUNTY, STATE HIGHWAY 121, from the Dallas North Tollway to US 75, is currently planned as a six-lane divided highway to be on the state highway system. The existing section will consist of a proposed controlled-access facility with three tolled mainlanes and non-tolled discontinuous one-way frontage roads in each direction.

Transportation Code, §228.051 provides that the Texas Transportation Commission (commission), by order, may designate one or more lanes of a segment of the state highway system as a toll project or system.

Transportation Code, §203.003 authorizes the commission to lay out, construct, maintain, and operate a designated state highway, with control of access as necessary to facilitate the flow of traffic and promote the public safety and welfare.

IT IS THEREFORE ORDERED by the commission that the tolled mainlanes on SH 121 from Dallas North Tollway to US 75 is designated as a toll project on the state highway system.

IT IS FURTHER ORDERED that SH 121 from Dallas North Tollway to US 75 is designated as a controlled-access facility for the purpose of development, maintenance and operation.

ITEM 8. TRANSPORTATION PLANNING

a. All Counties – Amend the 2007 Statewide Preservation Program by authorizing the 2008 Supplemental Preventive Maintenance and Rehabilitation Program through a reduction of the Fiscal Year 2010 Preventive Maintenance and Rehabilitation Program (MO)

Commissioner Houghton made a motion, seconded by Commissioner Underwood and the commission approved the following minute order presented by Transportation Planning and Programming Division Director Jim Randall:

111131
TPP

On August 30, 2001, the Texas Transportation Commission (commission) approved Minute Order 108608 accepting a report entitled “Texas Transportation Partnerships: Connecting You to the World.” With that report, the Texas Department of Transportation (department) established a goal of improving all of its pavements to “90 percent good or better” by fiscal year (FY) 2012.

From FY 2002 to FY 2005, pavement scores were rising as the department worked toward its goal; however, the upward trend reversed in FY 2006. A majority of the department’s districts do not yet meet the established goal.

On March 30, 2006, the commission approved Minute Order 110479 which authorized the 2007 Statewide Preservation Program (SPP). As a portion of the SPP, the FY 2010 Preventive Maintenance and Rehabilitation Program totaled \$1.325 billion.

In order to meet the department's established goal, it will be necessary to increase resources available to the districts with declining pavement scores by reallocating funds from the previously authorized program to a new supplemental program.

IT IS THEREFORE ORDERED by the commission that the FY 2010 Preventive Maintenance and Rehabilitation Program contained in the 2007 SPP is superseded by the \$1.1 billion program as shown in Exhibit A.

IT IS FURTHER ORDERED that the 2007 SPP is hereby amended to include a new FY 2008 Supplemental Preventive Maintenance and Rehabilitation Program in the amount of \$225 million as shown in Exhibit B.

Note: Exhibits A and B on file with minute order clerk.

b. Hidalgo County – Amend the 2007 Statewide Mobility Program to authorize a project to extend FM 396/Anzalduas Road and construct an overpass at FM 1016 in Category 12, Strategic Priority (MO)

Commissioner Houghton made a motion, seconded by Commissioner Underwood and the commission approved the following minute order presented by Transportation Planning and Programming Division Director Jim Randall:

111132
TPP

In HIDALGO COUNTY (county), a project is being proposed for the construction of a new controlled access facility, FARM TO MARKET ROAD 396, from 0.7 mile south of FM 1016 north on new location to Bryan Road at 0.7 mile south of Trinity Road, a distance of approximately 1.5 miles. This project will consist of constructing a four-lane divided facility and overpass at FM 1016 and Rio Valley Railroad.

The proposed project will provide a connection to the Anzalduas International Bridge facilities that are currently under construction. In order to complete the proposed project at the same time as the bridge facilities, it is necessary to amend Category 12, Strategic Priority, of the 2007 SMP to include this connection. The estimated total cost of the project is \$22 million.

The Texas Transportation Commission (commission) approved the 2007 SMP by Minute Order 110753, dated November 16, 2006. The proposed project will provide increased mobility, enhanced safety, and improved air quality and expand economic opportunity in the area.

IT IS THEREFORE ORDERED by the commission that the 2007 SMP be amended to authorize the additional project selection for \$9 million in Category 12, Strategic Priority.

Note: The commission received comments from City Manager for the City of Mission Julio Cerda.

ITEM 9. STATE INFRASTRUCTURE BANK**b. Final Approval**

(3) Hidalgo County – Mission Redevelopment Authority – Consider granting final approval of an application from the Mission Redevelopment Authority to borrow \$3 million from the State Infrastructure Bank to pay for construction related to the extension of FM 396/Anzalduas Road from the international border to US 83 in Hidalgo County (MO)

Commissioner Houghton made a motion, seconded by Commissioner Underwood and the commission approved the following minute order presented by Chief Financial Officer James Bass:

111133
FIN

On September 27, 2007, by Minute Order Number 111084, the Texas Transportation Commission (commission) granted preliminary approval of an application for financial assistance from the Mission Redevelopment Authority to borrow \$3 million from the State Infrastructure Bank (SIB) to pay for costs resulting from the extension of FM 396/Anzalduas Road from the international border to US 83 in the city of Mission.

Pursuant to the commission's preliminary approval, the executive director implemented and completed negotiations and other actions authorized and required by commission rules. The executive director affirms that the necessary social, economic, and environmental impact study has been completed, and that the Texas Department of Transportation (department) has approved that study. The executive director recommends that the commission grant final approval of the SIB application for financial assistance.

The commission determines that providing financial assistance will protect the public safety and prudently provide for the protection of public funds, while furthering the purposes of the SIB; and that the project will provide for all reasonable and feasible measures to avoid, minimize, or mitigate for adverse environmental impacts.

IT IS THEREFORE ORDERED that the financial assistance application submitted by the Mission Redevelopment Authority to borrow \$3 million from the State Infrastructure Bank is granted final approval. The executive director is directed and authorized to enter into the financial assistance agreement as negotiated with the Mission Redevelopment Authority. The loan will be repaid over a period of no more than 15 years at 3.85 percent interest per annum.

a. Preliminary Approval

(1) Grayson County – City of Pottsboro – Consider granting preliminary approval of an application from the City of Pottsboro to borrow \$1 million from the State Infrastructure Bank to pay for utility relocation due to expansion of SH 289 in the city of Pottsboro (MO)

Commissioner Houghton made a motion, seconded by Commissioner Underwood and the commission approved the following minute order presented by Chief Financial Officer James Bass:

111134
FIN

The City of Pottsboro (city) submitted an application for \$1 million in financial assistance from the State Infrastructure Bank (SIB) under Title 43 Texas Administrative Code, Chapter 6 (rules). The application satisfied all requirements of the rules, including passage by the city of a resolution authorizing submission of the application to the Texas Department of Transportation (department). The city intends to use the financial assistance to pay for utility relocation along FM 996 and the proposed SH 289 made necessary by the extension of SH 289 in the city of Pottsboro.

The intended use of the financial assistance conforms to the purposes of the SIB. The present and projected financial condition of the SIB is sufficient to cover the requested financial assistance for the project.

Based on department review and analysis of the application, the Texas Transportation Commission (commission) makes the following findings: 1) the city has offered its sales tax revenues as security to assure likely repayment of the financial assistance; 2) the project is consistent with the Statewide Transportation Plan; 3) the project is listed in the 2008-2010 Statewide Transportation Improvement Program and is consistent with the State Implementation Plan; 4) the project will improve both the safety and efficiency of state transportation systems; and 5) the repayment of the financial assistance under negotiated terms will expand the availability of funding for other transportation projects and reduce direct state costs.

NOW, THEREFORE, IT IS DETERMINED that the application for SIB financial assistance submitted by the City of Pottsboro meets the requirements of commission rules, and in accordance with those rules and applicable law, the commission grants preliminary approval of the application to borrow \$1 million from the State Infrastructure Bank, and directs the executive director to commence negotiations and other actions authorized and required by its rules.

(2) Harris County – **City of Baytown** – Consider granting preliminary approval of an application from the City of Baytown to borrow \$2 million from the State Infrastructure Bank to pay for construction of a direct connector from Spur 330 to SH 146 in the city of Baytown (MO)

Commissioner Houghton made a motion, seconded by Commissioner Underwood and the commission approved the following minute order presented by Chief Financial Officer James Bass:

111135
FIN

The City of Baytown (city) submitted an application for financial assistance from the State Infrastructure Bank (SIB) under Title 43 Texas Administrative Code, Chapter 6 (rules). The application satisfied all requirements of the rules, including passage by the city of a resolution authorizing submission of the application to the Texas Department of Transportation (department). The city intends to use the financial assistance to pay for construction of a direct connector braided ramp from Spur 330 to SH 146 in Baytown.

The intended use of the financial assistance conforms to the purposes of the SIB. The present and projected financial condition of the SIB is sufficient to cover the requested financial assistance for the project.

Based on department review and analysis of the application, the Texas Transportation Commission (commission) makes the following findings: 1) the city has offered its property tax revenues as security to assure likely repayment of the financial assistance; 2) the project is consistent with the Statewide Transportation Plan; 3) the project is listed in the 2008-2011 Statewide Transportation Improvement Program and is consistent with the State Implementation Plan; 4) the project will improve both the safety and efficiency of state transportation systems; and 5) the repayment of the financial assistance under negotiated terms will expand the availability of funding for other transportation projects and reduce direct state costs.

NOW, THEREFORE, IT IS DETERMINED that the application for SIB financial assistance submitted by the City of Baytown meets the requirements of commission rules, and in accordance with those rules and applicable law, the commission grants preliminary approval of the application to borrow \$2 million from the State Infrastructure Bank, and directs the executive director to commence negotiations and other actions authorized and required by its rules.

c. Hunt County – Caddo Basin Special Utility District – Consider granting preliminary approval of an application from the Caddo Basin SUD to borrow \$2,119,002 million from the State Infrastructure Bank to pay for utility relocation costs along US 380 from the city of Greenville westward to the Hunt/Collin county line (MO)

Commissioner Houghton made a motion, seconded by Commissioner Underwood and the commission approved the following minute order presented by Chief Financial Officer James Bass:

111136
FIN

The Caddo Basin Special Utility District (SUD) submitted an application for financial assistance from the State Infrastructure Bank (SIB) under Title 43 Texas Administrative Code, Chapter 6 (rules). The application satisfied all requirements of the rules, including passage by the special utility district of a resolution authorizing submission of the application to the Texas Department of Transportation (department). The special utility district intends to use the financial assistance to pay for utility relocation made necessary by the expansion of US 380 in Hunt County from the city of Greenville west to the Hunt/Collin county line.

The intended use of the financial assistance conforms to the purposes of the SIB. The present and projected financial condition of the SIB is sufficient to cover the requested financial assistance for the project.

Based on department review and analysis of the application, the Texas Transportation Commission (commission) makes the following findings: 1) the SUD has offered its utility revenues as security to assure likely repayment of the financial assistance; 2) the project is consistent with the Statewide Transportation Plan; 3) the project is listed in the 2006-2008 Statewide Transportation Improvement Program and is consistent with the State Implementation Plan; 4) the project will improve both the safety and efficiency of state transportation systems; and 5) the repayment of the financial assistance under negotiated terms will expand the availability of funding for other transportation projects and reduce direct state costs.

NOW, THEREFORE, IT IS DETERMINED that the application for SIB financial assistance submitted by the Caddo Basin Special Utility District meets the requirements of commission rules, and in accordance with those rules and applicable law, the commission grants preliminary approval of the application to borrow \$2,119,002 from the State Infrastructure Bank, and directs the executive director to commence negotiations and other actions authorized and required by its rules.

b. Final Approval

(1) Collin County – Culleoka Water Supply Corporation – Consider granting final approval of an application from the Culleoka Water Supply Corporation to borrow \$1,879,418 from the State Infrastructure Bank to pay for waterline relocation along FM 982 in Collin County (MO)

Commissioner Houghton made a motion, seconded by Commissioner Underwood and the commission approved the following minute order presented by Chief Financial Officer James Bass:

111137
FIN

On October 25, 2007, by Minute Order Number 111105, the Texas Transportation Commission (commission) granted preliminary approval of an application for financial assistance from the Culleoka Water Supply Corporation (corporation) to borrow \$1,879,418 from the State Infrastructure Bank (SIB) to pay for waterline relocation costs along FM 982 resulting from the expansion of FM 982 in Collin County.

Pursuant to the commission's preliminary approval, the executive director implemented and completed negotiations and other actions authorized and required by commission rules. The executive director affirms that the necessary social, economic, and environmental impact study has been completed, and that the Texas Department of Transportation (department) has approved that study. The executive director recommends that the commission grant final approval of the SIB application for financial assistance.

The commission determines that providing financial assistance will protect the public safety and prudently provide for the protection of public funds, while furthering the purposes of the SIB; and that the project will provide for all reasonable and feasible measures to avoid, minimize, or mitigate for adverse environmental impacts.

IT IS THEREFORE ORDERED that the financial assistance application submitted by the Culleoka Water Supply Corporation to borrow \$1,879,418 from the State Infrastructure Bank is granted final approval. The executive director is directed and authorized to enter into the financial assistance agreement as negotiated with the corporation. The loan will be paid over a period of no more than 15 years at 4.3 percent interest per annum.

(2) El Paso County – City of El Paso – Consider granting final approval of an application from the City of El Paso to borrow \$6,107,000 from the State Infrastructure Bank to pay for rehabilitation of the Stanton International Bridge in the City of El Paso (MO)

Commissioner Houghton made a motion, seconded by Commissioner Underwood and the commission approved the following minute order presented by Chief Financial Officer James Bass:

111138
FIN

On October 25, 2007, by Minute Order Number 111106, the Texas Transportation Commission (commission) granted preliminary approval of an application for financial assistance from the City of El Paso to borrow \$6,107,000 from the State Infrastructure Bank (SIB) to pay for improvements to the Stanton International Bridge in El Paso.

Pursuant to the commission's preliminary approval, the executive director implemented and completed negotiations and other actions authorized and required by commission rules. The executive director affirms that the necessary social, economic, and environmental impact study has been completed, and that the Texas Department of Transportation (department) has approved that study. The executive director recommends that the commission grant final approval of the SIB application for financial assistance.

The commission determines that providing financial assistance will protect the public safety and prudently provide for the protection of public funds, while furthering the purposes of the SIB; and that the project will provide for all reasonable and feasible measures to avoid, minimize, or mitigate for adverse environmental impacts.

IT IS THEREFORE ORDERED that the financial assistance application submitted by the City of El Paso to borrow \$6,107,000 from the State Infrastructure Bank is granted final approval. The executive director is directed and authorized to enter into the financial assistance agreement as negotiated with the City of El Paso. The loan will be paid over a period of no more than 15 years at 4.1 percent interest per annum.

ITEM 10. CONTRACTS

a. Award or Reject Highway Improvement Contracts

(1) Highway Maintenance and Department Building Construction (see attached itemized list) (MO)

Commissioner Houghton made a motion, seconded by Commissioner Underwood and the commission approved the following minute order as recommended by staff and presented by Construction Division Director Thomas Bohuslav:

111139
CST

Pursuant to Transportation Code, Chapter 223, Subchapter A, and Title 43, Texas Administrative Code, Chapter 9, Subchapter B, the Texas Department of Transportation (department) solicited and received sealed competitive bid proposals for maintenance of the State Highway System, which were publicly opened and read on November 1 and 2, 2007.

Pursuant to cited code provisions highway maintenance contract bids on a project may be accepted or rejected, but if accepted must be awarded to the lowest bidder.

An award is conditional in the event it is subject to Federal Highway Administration concurrence, third party funding or concurrence, and other conditions listed in the contract.

The department recommends that the Texas Transportation Commission (commission) respectively award to the lowest bidder or reject, as indicated, those highway maintenance and department building construction contracts, with an engineer's estimated cost of \$300,000 or more, identified on attached Exhibit A to this order.

IT IS THEREFORE ORDERED by the commission that the contracts described in Exhibit A be and are hereby respectively awarded to the lowest bidder or rejected as indicated therein.

If a contractual requirement of award is not satisfied within the prescribed time limit, including any extension of time allowed by the executive director or the director's designee, by reason of the action or inaction of the successful low bidder on any contract, including, but not limited to, disadvantaged business/historically underutilized business participation, the contract is automatically in default and the executive director is authorized and directed to retain and deposit the related contract proposal guaranty to the credit of the State Highway Fund and to readvertise that project for competitive bids at the earliest practical subsequent date.

If a condition of award is not satisfied, including, but not limited to, reason of nonconcurrence of the Federal Highway Administration, the failure of a third party to fund or concur, or failure to meet other conditions in the contract, the respective award is voided and the department will return the bid guaranty.

Note: Exhibit A on file with minute order clerk.

(2) Highway and Transportation Enhancement Building Construction (see attached itemized list) (MO)

Commissioner Houghton made a motion, seconded by Commissioner Underwood and the commission approved the following minute order as recommended by staff and presented by Construction Division Director Thomas Bohuslav:

111140
CST

Pursuant to Transportation Code, Chapter 223, Subchapter A, and Title 43, Texas Administrative Code, Chapter 9, Subchapter B, the Texas Department of Transportation (department) solicited and received sealed competitive bid proposals for improvement of the State Highway System, which were publicly opened and read on November 1 and 2, 2007.

Pursuant to cited code provisions highway improvement contract bids on a project may be accepted or rejected, but if accepted must be awarded to the lowest bidder.

An award is conditional in the event it is subject to Federal Highway Administration concurrence, third party funding or concurrence, and other conditions listed in the contract.

The department recommends that the commission respectively award to the lowest bidder or reject, as indicated, those highway and transportation enhancement building construction contracts identified on attached Exhibit A to this order.

IT IS THEREFORE ORDERED by the commission that the contracts described in Exhibit A be and are hereby respectively awarded to the lowest bidder or rejected as indicated therein.

If a contractual requirement of award is not satisfied within the prescribed time limit, including any extension of time allowed by the executive director or the director's designee, by reason of the action or inaction of the successful low bidder on any contract, including, but not limited to, disadvantaged business/historically underutilized business participation, the contract is automatically in default and the executive director is authorized and directed to retain and deposit the related contract proposal guaranty to the credit of the State Highway Fund and to readvertise that project for competitive bids at the earliest practical subsequent date.

If a condition of award is not satisfied, including, but not limited to, reason of nonconcurrence of the Federal Highway Administration, the failure of a third party to fund or concur, or failure to meet other conditions in the contract, the respective award is voided and the department will return the bid guaranty.

Note: Exhibit A on file with minute order clerk.

b. Aransas County – Project RMC 6167-87-001. Award of maintenance contract to second lowest bidder (MO)

Commissioner Houghton made a motion, seconded by Commissioner Underwood and the commission approved the following minute order as recommended by staff and presented by Construction Division Director Thomas Bohuslav:

111141
MNT

Project RMC 6167-87-001 (Tree Trimming and Brush Removal) was let on September 27, 2007 in the Corpus Christi District. Two Sister's Construction Company was the low bidder but was unable to fulfill bonding requirements. The second lowest bidder, Woodstock Tree Surgeons, has indicated in writing that they are willing to perform the work at the unit bid prices set forth in the lowest bid.

Section 221.0041 of the Transportation Code allows the Texas Transportation Commission (commission), under certain conditions, to award a maintenance contract of less than \$300,000 to the second lowest bidder when the lowest bidder does not execute a contract.

Title 43, Texas Administrative Code §9.17(d) allows the commission to accept the withdrawal of the lowest bid and award the contract to the second lowest bidder on the recommendation of the executive director when the executive director determines that the second lowest bidder is willing to perform the work at the unit bid prices of the lowest bidder, the unit bid prices of the lowest bidder are reasonable, and delaying award of the contract may result in significantly higher unit bid prices.

The memorandum attached as Exhibit A to this minute order and incorporated in this order by reference contains the executive director's recommendation and written determination, required by 43 TAC §9.17(d), that the contract is eligible for award to the second lowest bidder in accordance with the law and the rules.

The commission concurs with the executive director's determinations as set forth in attached Exhibit A.

IT IS THEREFORE ORDERED by the commission that Two Sister's Construction Company, be allowed to withdraw its bid for the contract for Project RMC 6167-87-001.

IT IS FURTHER ORDERED that the contract for Project RMC 6167-87-001 be awarded to Woodstock Tree Surgeons, in the low bid amount of \$56,693.75.

Note: Exhibit A on file with minute order clerk.

ITEM 11. Promulgation of Administrative Rules Under Title 43, Texas Administrative Code, and the Administrative Procedure Act, Government Code, Chapter 2001:

a. Proposed Adoption (to be published in the Texas Register for public comment)

(1) Chapter 6 – State Infrastructure Bank (MO)

Amendments to §6.42, Performance of Work, and §6.45, Financial and Credit Requirements (Financial Assistance Agreements)

Commissioner Houghton made a motion, seconded by Commissioner Underwood, and the commission approved the following minute order presented by Chief Financial Officer James Bass:

111142
FIN

The Texas Transportation Commission (commission) finds it necessary to propose amendments to §6.42, performance of work, and §6.45, financial and credit requirements, relating to state infrastructure bank financial assistance agreements, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed amendments, attached to this minute order as Exhibits A and B, are incorporated by reference as though set forth at length verbatim in this minute order.

IT IS THEREFORE ORDERED by the commission that the amendments to §6.42 and §6.45 are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Note: Exhibits A and B on file with minute order clerk.

(2) Chapter 8 – Motor Vehicle Distribution (MO)

Amendments to §8.2 Definitions; Conformity with Statutory Requirements (General Provisions), §8.21, Objective, §8.28, Hearing Docket, §8.56, Final Decision (Adjudicative Practice and Procedure), New §8.201, Objective (Warranty Performance Obligations), New §8.301, Scope and Purpose, New §8.302, Conformity with Statutory Requirements, New §8.303, Application of Division and SOAH Rules, New §8.304, Notice of Alleged Violation, New §8.305, Filing of Complaints, Protests, and Petitions, New §8.306, Referral to SOAH, New §8.307, Notice of Hearing, New §8.308, Reply to Notice of Hearing and Default Proceedings, New §8.309, Recording and Transcriptions of Hearing Cost, New §8.310, Issuance of Proposals for Decision, Recommendations, and Orders, New §8.311, Amicus Briefs, New §8.312, Discovery, New §8.313, Official Notice of Division Records, New §8.314, Cease and Desist Orders, New §8.315, Statutory Stay, New §8.316, Informal Disposition, and New §8.317, Motion for Rehearing (New Subchapter I, Practice and Procedure for Hearings Conducted by the State Office of Administrative Hearings)

Commissioner Underwood made a motion, seconded by Commissioner Houghton, and the commission approved the following minute order presented by Motor Vehicle Division Director Brett Bray:

111143
MVD

The Texas Transportation Commission (commission) finds it necessary to propose amendments to §8.2 definitions; conformity with statutory requirements, §8.21, objective, §8.28, hearing docket, §8.56, final decision, §8.201, objective, new §8.301, scope and purpose, new §8.302, conformity with statutory requirements, new §8.303, application of division and SOAH rules, new §8.304, notice of alleged violation, new §8.305, filing of complaints, protests, and petitions, new §8.306, referral to SOAH, new §8.307, notice of hearing, new §8.308, reply to notice of hearing and default proceedings, new §8.309, recording and transcriptions of hearing cost, new §8.310, issuance of proposals for decision, recommendations, and orders, new §8.311, amicus briefs, new §8.312, discovery, new §8.313, official notice of division records, new §8.314, cease and desist orders, new §8.315, statutory stay, new §8.316, informal disposition, and new §8.317, motion for rehearing, all relating to practice and procedure for hearings conducted by the State Office of Administrative Hearings, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed amendments and new sections, attached to this minute order as Exhibits A - E, are incorporated by reference as though set forth at length verbatim in this minute order.

IT IS THEREFORE ORDERED by the commission that the amendments to §8.2, §8.21, §8.28, §8.56, and §8.201, and new §8.301, §8.302, §8.303, §8.304, §8.305, §8.306, §8.307, §8.308, §8.309, §8.310, §8.311, §8.312, §8.313, §8.314, §8.315, §8.316, and §8.317 are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Note: Exhibits A through E on file with minute order clerk.

(3) Chapter 17 – Vehicle Titles and Registration (MO)

Amendments to §17.22, Motor Vehicle Registration, and §17.30, Commercial Vehicle Registration (Motor Vehicle Registration), §17.68, Rebuilt Salvage Motor Vehicles (Nonrepairable and Salvage Motor Vehicles), §17.73, Salvage Vehicle Dealer License, and §17.81, Denial, Suspension, or Revocation (Salvage Vehicle Dealers)

Commissioner Underwood made a motion, seconded by Commissioner Houghton, and the commission approved the following minute order presented by Vehicle Titles and Registration Division Director Rebecca Davio:

111144
VTR

The Texas Transportation Commission (commission) finds it necessary to propose amendments to §17.22, motor vehicle registration, §17.30, commercial vehicle registration, §17.68, rebuilt salvage motor vehicles, §17.73, salvage vehicle dealer license, and §17.81, denial, suspension, or revocation, all relating to vehicle titles and registration to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed amendments, attached to this minute order as Exhibits A -D, are incorporated by reference as though set forth at length verbatim in this minute order.

IT IS THEREFORE ORDERED by the commission that the amendments to §17.22, §17.30, §17.68, §17.73, and §17.81 are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Note: Exhibits A through D on file with minute order clerk.

(4) Chapter 21 – Right of Way (MO)

New §21.921, Purpose, §21.922, Definitions, §21.923, Eligibility, §21.924, Application Procedure, §21.925, Master Agreement, §21.926, Calculation of Annual Prepayment Amount, §21.927, Project Utility Agreement, §21.928, Utility Cost Estimates, §21.929, Reimbursement, §21.930, General Requirements (New Subchapter P, Utility Relocation Prepayment Funding Agreements)

Commissioner Houghton made a motion, seconded by Commissioner Underwood, and the commission approved the following minute order presented by Right of Way Division Director John Campbell:

111145
ROW

The Texas Transportation Commission (commission) finds it necessary to propose new §21.921, purpose, §21.922, definitions, §21.923, eligibility, §21.924, application procedure, §21.925, master agreement, §21.926, calculation of annual prepayment amount, §21.927, project utility agreement, §21.928, utility cost estimates, §21.929, reimbursement, and §21.930, general requirements, all relating to utility relocation prepayment funding agreements, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed new sections, attached to this minute order as Exhibits A and B, are incorporated by reference as though set forth at length verbatim in this minute order.

IT IS THEREFORE ORDERED by the commission that the new §21.921, §21.922, §21.923, §21.924, §21.925, §21.926, §21.927, §21.928, §21.929, and §21.930 are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Note: Exhibits A and B on file with minute order clerk.

Note: The commission received comments from AT&T Executive Director Bob Digneo.

(5) Chapter 31 – Public Transportation (MO)

Amendments to §31.1, Scope and Purpose, §31.2, Organization, §31.3, Definitions (General), §31.11, Formula Program (State Programs), §31.16, Section 5309 Grant Program, §31.17, Section 5316 Grant Program, §31.18, Section 5317 Grant Program, §31.21, Section 5303 Grant Program, §31.22, Section 5313 Grant Program, §31.26, Section 5307 Grant Program, §31.31, Section 5310 Grant Program, §31.36, Section 5311 Grant Program, §31.37, Rural Transit Assistance Program (Federal Programs), §31.40, Public Involvement, §31.41, Private Sector Participation, §31.42, Standard Federal Requirements, §31.43, Contracting Requirements, §31.44, Procurement Requirements, §31.47, Audit and Project Close-Out Standards, §31.48, Project Oversight (Program Administration), §31.53, Maintenance Requirements, and §31.57, Disposition (Property Management Standards)

Commissioner Houghton made a motion, seconded by Commissioner Underwood, and the commission approved the following minute order presented by Public Transportation Division Director Eric Gleason:

111146
PTN

The Texas Transportation Commission (commission) finds it necessary to propose amendments to §31.1, scope and purpose, §31.2, organization, §31.3, definitions, §31.11, formula program, §31.16, section 5309 grant program, §31.17, section 5316 grant program, §31.18, section 5317 grant program, §31.21, section 5303 grant program, §31.22, section 5313 grant program, §31.26, section 5307 grant program, §31.31, section 5310 grant program, §31.36, section 5311 grant program, §31.37, rural transit assistance program, §31.40, public involvement, §31.41, private sector participation, §31.42, standard federal requirements, §31.43, contracting requirements, §31.44, procurement requirements, §31.47, audit and project close-out standards, §31.48, project oversight, §31.53, maintenance requirements, and §31.57, disposition, all relating to public transportation, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed amendments, attached to this minute order as Exhibits A - F, are incorporated by reference as though set forth at length verbatim in this minute order.

IT IS THEREFORE ORDERED by the commission that the amendments to §31.1, §31.2, §31.3, §31.11, §31.16, §31.17, §31.18, §31.21, §31.22, §31.26, §31.31, §31.36, §31.37, §31.40, §31.41, §31.42, §31.43, §31.44, §31.47, §31.48, §31.53, and §31.57, are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Note: Exhibits A through F on file with minute order clerk.

b. Final Adoption**(1) Chapter 1 – Management (MO)**

Amendments to §1.82, Statutory Advisory Committee Operations and Procedures, §1.85, Department Advisory Committees (Advisory Committees)

Commissioner Houghton made a motion, seconded by Commissioner Underwood, and the commission approved the following minute order presented by General Counsel Bob Jackson:

111147
OGC

The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §1.82, statutory advisory committee operations and procedures, and §1.85, department advisory committees, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and adopted amendments, attached to this minute order as Exhibits A and B, are incorporated by reference as though set forth at length verbatim in this minute order.

IT IS THEREFORE ORDERED by the commission that the amendments to §1.82, and §1.85, are adopted and are authorized for filing with the Office of the Secretary of State.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Note: Exhibits A and B on file with minute order clerk.

(2) Chapter 9 – Contract Management (MO)

Amendments to §9.20, Partial Payments (Highway Improvement Contracts)

Commissioner Houghton made a motion, seconded by Commissioner Underwood, and the commission approved the following minute order presented by Construction Division Director Thomas Bohuslav:

111148
CST

The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §9.20, relating to partial payments, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the adopted amendments, attached to this minute order as Exhibits A and B, are incorporated by reference as though set forth at length verbatim in this minute order.

IT IS THEREFORE ORDERED by the commission that the amendments to §9.20 are adopted and authorized for filing with the Office of the Secretary of State.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Note: Exhibits A and B on file with minute order clerk.

(3) Chapter 15 – Transportation Planning and Programming (MO)

Amendments to §15.101, Definitions, §15.103, Application Procedures, and §15.105, Apportionment (Border Colonia Access Program)

Commissioner Houghton made a motion, seconded by Commissioner Underwood, and the commission approved the following minute order presented by Transportation Planning and Programming Division Director Jim Randall:

111149
TPP

The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §15.101, definitions, §15.103, application procedures, and §15.105, apportionment, relating to the Border Colonia Access Program, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the adopted amendments, attached to this minute order as Exhibits A and B, are incorporated by reference as though set forth at length verbatim in this minute order.

IT IS THEREFORE ORDERED by the commission that amendments to §15.101, §15.103, and §15.105 are adopted and authorized for filing with the Office of the Secretary of State.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Note: Exhibits A and B on file with minute order clerk.

(4) Chapter 23 – Travel Information (MO)

Amendments to §23.2, Definitions (General Provisions), and §23.14, Display of Travel Literature in the Texas Travel Information Centers (Travel Information), Repeal of §23.26, Magazine Discount Card Program, Amendments to §23.27, Magazine Ancillary Products, and §23.29, Magazine Advertising (Texas Highways Magazine)

Commissioner Houghton made a motion, seconded by Commissioner Underwood, and the commission approved the following minute order presented by Travel Division Director Doris Howdeshell:

111150
TRV

The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §23.2, definitions, §23.14, display of travel literature in the Texas Travel Information Centers, §23.27, magazine ancillary products, and §23.29, magazine advertising, and repeal §23.26, magazine discount card program, all relating to travel information, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the adopted repeals and amendments, attached to this minute order as Exhibits A - D, are incorporated by reference as though set forth at length verbatim in this minute order.

IT IS THEREFORE ORDERED by the commission that the repeal of §23.26 and amendments to §23.2, §23.14, §23.27, and §23.29 are adopted and authorized for filing with the Office of the Secretary of State.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Note: Exhibits A through D on file with minute order clerk.

(5) Chapter 25 – Traffic Operations (MO)

New §25.950, Purpose, §25.951, Definitions, §25.952, Application, §25.953, Determination of Program Eligibility, §25.954, Fee, §25.955, Sign Description, §25.956, Sign Installation and Replacement, and §25.957, Sign Removal (New Subchapter N, Memorial Sign Program for Victims of Impaired Driving)

Commissioner Houghton made a motion, seconded by Commissioner Underwood, and the commission approved the following minute order presented by Traffic Operations Division Director Carlos Lopez:

111151
TRF

The Texas Transportation Commission (commission) finds it necessary to adopt new §25.950, purpose, §25.951, definitions, §25.952, application, §25.953, determination of program eligibility, §25.954, fee, §25.955, sign description, §25.956, sign installation and replacement, and §25.957, sign removal, all relating to a memorial sign program for victims of impaired driving, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the adopted new sections, attached to this minute order as Exhibits A and B, are incorporated by reference as though set forth at length verbatim in this minute order.

IT IS THEREFORE ORDERED by the commission that the new §25.950, §25.951, §25.952, §25.953, §25.954, §25.955, §25.956, and §25.957 are adopted and are authorized for filing with the Office of the Secretary of State.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Note: Exhibits A and B on file with minute order clerk.

(6) Chapter 27 – Toll Operations (MO)

Amendments to §27.4, Solicited Proposals, and New §27.10, Formula for Determining Compensation Upon Termination for Convenience (Comprehensive Development Agreements)

Commissioner Houghton made a motion, seconded by Commissioner Underwood, and the commission approved the following minute order presented by Texas Turnpike Authority Division Director Phillip Russell:

111152
TTA

The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §27.4, relating to solicited proposals, and new §27.10, relating to formula for determining compensation upon termination for convenience, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the adopted amendments and new section, attached to this minute order as Exhibits A and B, are incorporated by reference as though set forth at length verbatim in this minute order.

IT IS THEREFORE ORDERED by the commission that the amendments to §27.4 and new §27.10 are adopted and are authorized for filing with the Office of the Secretary of State.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Note: Exhibits A and B on file with minute order clerk.

c. Rule Review

In accordance with Government Code, §2001.039, Readoption of 43 Texas Administrative Code, Chapter 3, Public Information; Chapter 4, Employment Practices; Chapter 6, State Infrastructure Bank; Chapter 9, Contract Management; Chapter 13, Materials Quality; Chapter 22, Use of State Property; Chapter 23, Travel Information; Chapter 25, Traffic Operations; and Chapter 29, Maintenance (MO)

Commissioner Houghton made a motion, seconded by Commissioner Underwood, and the commission approved the following minute order presented by General Counsel Bob Jackson:

111153
OGC

Government Code, §2001.039 requires state agencies to readopt their rules every four years and, prior to readopting, to consider whether the reason for adopting each rule continues to exist.

During October and November 2007, the Texas Department of Transportation reviewed Title 43 Texas Administrative Code, Part 1, Chapter 3, Public Information; Chapter 4, Employment Practices; Chapter 6, State Infrastructure Bank; Chapter 9, Contract Management; Chapter 13, Materials Quality; Chapter 22, Use of State Property; Chapter 23, Travel Information; Chapter 25, Traffic Operations; and Chapter 29, Maintenance. The Notice of Intent to review was published in the *Texas Register* on October 5, 2007 (32 TexReg 7087).

No comments were received regarding this rule review.

The Texas Transportation Commission (commission) finds that the reasons for adopting these rules continue to exist.

Independent of the rule review, the commission contemporaneously adopted amendments to §9.20, Partial Payments, §23.2, Definitions, §23.14, Display of Travel Literature in the Texas Travel Information Centers, §23.27, Magazine Ancillary Products, and §23.29, Magazine Advertising and repealed §23.26, Magazine Discount Card Program.

IT IS THEREFORE ORDERED by the commission that the executive director provide for filing with the Office of the Secretary of State, Texas Register Division, a notice readopting these rules.

ITEM 12. ROUTINE MINUTE ORDERS

Commissioner Houghton made a motion, seconded by Commissioner Underwood, and the commission approved the following minute orders presented by Deputy Executive Director Steve Simmons.

a. Eminent Domain Proceedings

Various Counties – noncontrolled and controlled access highways (see attached itemized list) (MO)

111154
ROW

The Texas Transportation Commission (commission) of the State of Texas (state) has found in order to promote the public safety, to facilitate the safety and movement of

traffic and to preserve the financial investment of the public in its highways, public necessity requires the laying out, opening, constructing, reconstructing, maintaining, and operating of the following highways in the state as a part of the State Highway System (highway system).

The commission has found and determined that each of the following listed parcels of land, same being more particularly described in the exhibits attached hereto, and such additional lesser estates or property interests described thereon, are necessary or convenient for use for such purposes and it is necessary to acquire fee simple title to said land, as provided by Texas Transportation Code, Subchapter D, Chapter 203, Sections 203.051, 203.052, and 203.054, as a part of the highway system to be constructed, reconstructed, maintained and operated thereon.

The commission has found in order to promote the public safety, to facilitate the safety and movement of traffic, to preserve the financial investment of the public in its highways and reconstructing, maintaining, and operating of Controlled Access Highways in the state as a part of the highway system at such locations as are necessary throughout the state and has determined that each of the following listed parcels of land, described in those Exhibits designated, identified and listed by an alphabetical exhibit reference under "CONTROLLED ACCESS" and same being more particularly described in the exhibits attached hereto and such additional lesser estates or property interests described thereon, are necessary and suitable for use for such purposes and it is necessary to acquire fee simple title to said land, as provided by law, as a part of the highway system to be so constructed, reconstructed, maintained, and operated thereon and in the exercise of the police power of the state for the preservation of human life and safety, and under existing laws, the highway to be constructed on each such parcel of land is designated as a Controlled Access Highway, and on such parcels of land listed herein where there is remaining abutting private property, roads are to be built as a part of said highway whereby the right of ingress and egress to or from the remaining private property abutting on said highway is to be permitted and/or denied, as designated and set forth on each of the exhibits attached hereto.

The commission, through its duly authorized representatives, has attempted to negotiate with the owner(s) of the parcels of land described in the attached exhibits and has been unable to agree with such owner(s) as to the fair cash market value thereof and damages, if any, or after diligent search of available records, numerous inquiries, and actual visits to the location of said parcels of land has been unable to locate the owner(s) of same so as to enter into negotiations for the purchase of said parcels of land.

IT IS THEREFORE ORDERED that the executive director is hereby authorized and directed to transmit this request of the commission to the attorney general to file or cause to be filed against all owners, lienholders and any owners of any other interests in said parcels of land, proceedings in eminent domain to acquire in the name of and on behalf of the state, for said purposes, fee simple title to each such parcel of land as are more particularly described in each of the exhibits attached hereto and made a part hereof, and such additional lesser estates or property interests as are more fully described in each of said exhibits, save and excepting, oil, gas and sulphur, as provided by law, to wit:

NON-CONTROLLED ACCESS

<u>COUNTY</u>	<u>HIGHWAY</u>	<u>EXHIBIT</u>	<u>ROW CSJ NO.</u>	<u>PARCEL</u>
Brazoria	SH 35	5	0178-02-072	11
Collin	FM 982	3	0387-05-017	157
Collin	SH 289	2	0091-05-052	8
Collin	SH 289	1	0091-05-052	7
Robertson	SH 6	4	0049-06-070	6
Tarrant	SH 26	6	0363-01-126	97

CONTROLLED ACCESS

<u>COUNTY</u>	<u>HIGHWAY</u>	<u>EXHIBIT</u>	<u>ROW CSJ NO.</u>	<u>PARCEL</u>
Anderson	US 79	U	0205-07-065	25,25E
Angelina	US 69	D	0200-02-035	46
Angelina	US 69	L	0200-02-027	3
Archer	US 277	A	0156-05-047	13
Archer	US 277	B	0156-05-047	12
Caldwell	SH 130	Q	3583-01-002	1601W
Caldwell	SH 130	R	3583-01-002	1607W
Caldwell	SH 130	S	3583-01-002	1616W
Erath	US 67	K	0079-08-002	16
Harris	SH 35	J	0178-09-001	268
Hill	SH 31	M	0162-02-035	32, 32TE
Montgomery	IH 45	E	0675-08-089	26
Montgomery	IH 45	G	0675-08-089	25
Montgomery	IH 45	H	0675-08-089	3
Montgomery	IH 45	I	0675-08-089	132
Montgomery	IH 45	F	0675-08-089	24
Webb	Cuatro Vientos Rd.	C	0922-33-109	1
Williamson	SH 195	N	0440-01-037	46, 46E
Williamson	SH 195	O	0440-01-037	44, 44E, 44TE
Williamson	SH 195	T	0440-01-037	45
Williamson	SH 195	P	0836-01-013	13

Note: Exhibits 1 through 6 and A through U on file with minute order clerk.

b. Load Zones & Postings

Various Counties – Revise load restrictions on various bridges on the state highway system (MO)

111155
BRG

The Texas Transportation Commission (commission) under provision of V.T.C.A., Transportation Code, §621.102, may set the maximum gross weight of a vehicle and its load, maximum gross weight of a combination of vehicles and loads, maximum axle load, or maximum wheel load that may be moved over a state highway or a farm or ranch road if the commission finds that heavier maximum weight would rapidly deteriorate or destroy the road or a bridge along the road.

Pursuant to §621.102, a maximum weight or load may not exceed the maximum set by statute for that weight or load. This section does not apply to a vehicle delivering groceries, farm products, or liquefied petroleum gas.

An engineering and traffic investigation has been made to determine and fix the maximum loads that may be moved over the state highway system.

It has been determined from this investigation that the loads on certain bridges of the state highway system should be restricted or previous restrictions should be revised or removed.

IT IS THEREFORE ORDERED by the commission that the maximum load limits which may be moved over the bridges described in Exhibits A and B be placed, revised, or removed as set forth therein, superseding any portion of previous action in conflict. The executive director shall proceed with the erection of signs as appropriate, making the placement of these load limitations effective and operative.

Note: Exhibits A and B on file with minute order clerk.

c. Right of Way Dispositions and Donations

(1) Freestone County – SH 164 east of Donie – Consider the exchange of right of way (MO)

111156
ROW

In FREESTONE COUNTY, on STATE HIGHWAY 164, the State of Texas (state) acquired certain land needed for a state highway purpose by instruments recorded in Volume 194, Pages 277, 279, 280, and 281, and in Volume 195, Pages 40, 42, 43, 44, and 46, Deed Records of Freestone County, Texas.

A portion of the land (surplus land), described in Exhibit A, is no longer needed for a state highway purpose.

Texas Westmoreland Coal Co., formerly known as Northwestern Resources Co. (owner), has conveyed to the state land needed for a state highway purpose (new land), described in Exhibit B, and desires to make a partial donation to the state of the difference in value between the new land and the surplus land.

V.T.C.A., Transportation Code, Chapter 201, Subchapter D, authorizes the Texas Department of Transportation (department) to accept donations of real property for the purpose of carrying out its functions and duties.

V.T.C.A., Government Code, Chapter 575, requires the Texas Transportation Commission (commission) to accept by majority vote at an open meeting any gift or donation valued at over \$500, and the commission hereby finds that acceptance of the donation will provide a significant public benefit and will not influence or reasonably appear to influence the department in the performance of its duties.

An Agreement Concerning the Donation of Property to the Texas Department of Transportation (donation agreement) has been executed by the owner and tendered to the department for acceptance under the provisions of Title 43, Texas Administrative Code, Chapter 1, Subchapter G, since the value of the new land provided by the owner, which is \$71,298, exceeds the value of the surplus land, which is \$54,206.

The owner has executed and delivered a conveyance document under the terms of the donation agreement to convey the new land to the state and has requested that the state's rights, title and interest in the surplus land be conveyed to the owner.

In accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the commission may recommend the exchange of surplus land as partial or full consideration for other land needed for a state highway purpose.

It is the opinion of the commission that it is proper and correct that the state convey its rights, title and interest in the surplus land to the owner in exchange and as consideration for the partial donation and the conveyance of the new land to the state.

IT IS THEREFORE ORDERED by the commission that the executive director is hereby authorized to accept the donation of the new land and that the executive director or the director's designee is authorized and directed to sign and execute a donation agreement with the owner, in accordance with Title 43, Texas Administrative Code, Chapter 1, Subchapter G.

FURTHER, in consideration of the foregoing premises and in accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the commission finds that the surplus land is no longer needed for a state highway purpose and recommends, subject to approval by the attorney general, that the Governor of Texas execute a proper instrument conveying all of the state's rights, title and interest in the surplus land to owner in exchange and as consideration for the conveyance of the new land to the state; SAVE AND EXCEPT, however, there is excepted and reserved herefrom all of Grantor's rights, titles and interests, if any, in and to all of the oil, gas, sulphur and other minerals, except coal and lignite rights, of every kind and character, in, on, under and that may be produced from the property described in Exhibit A, but Grantor waives all rights of ingress and egress to the surface thereof for the purpose of exploring, developing, mining or drilling for same, provided, however, that operations for exploration or recovery of such minerals shall be permissible so long as all surface operations in connection therewith are located at a point outside of said property.

Note: Exhibit A on file with minute order clerk.

(2) Hardin County – US 96 south of SH 327 in Silsbee – Consider the sale of surplus right of way (MO)

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ROW

In HARDIN COUNTY, on US 96, the State of Texas acquired certain land needed for state highway purposes by various instruments recorded in the Deed Records of Hardin County, Texas.

A portion of the land (surplus land), described in Exhibit A, is no longer needed for a state highway purpose.

In accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the Texas Transportation Commission (commission) may recommend the sale of surplus land.

Umphey Family Limited Partnership, a Texas limited partnership, is the abutting landowner and has requested that the surplus land be sold to the partnership for \$27,924.

The commission finds \$27,924 to be a fair and reasonable value for the state's rights, title and interest in the surplus land.

NOW, THEREFORE, the commission finds that the surplus land is no longer needed for a state highway purpose and recommends, subject to approval by the attorney general, that the Governor of Texas execute a proper instrument conveying all of the

state's rights, title and interest in the surplus land to Umphrey Family Limited Partnership, a Texas limited partnership, for \$27,924; SAVE AND EXCEPT, however, there is excepted and reserved herefrom all of the state's rights, titles and interests, if any, in and to all of the oil, gas, sulphur and other minerals, of every kind and character, in, on, under and that may be produced from the surplus land.

Note: Exhibit A on file with minute order clerk.

(3) Limestone County – SH 7 east of Kosse – Consider the sale of surplus right of way (MO)

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ROW

In LIMESTONE COUNTY, on STATE HIGHWAY 7, the State of Texas acquired certain land needed for state highway purposes by instruments recorded in Volume H, Page 209, Civil Minutes of Limestone County, Texas, and in Volume 154, Page 624, and Volume 396, Pages 274 and 319, Deed Records of Limestone County, Texas.

A portion of the land (surplus land), described in Exhibit A, save and except Tract 7, Parts 3 and 4, is no longer needed for a state highway purpose.

In accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the Texas Transportation Commission (commission) may recommend the sale of surplus land.

Oak Grove Mining Company LLC is the abutting landowner and has requested that the surplus land be sold to the company for \$5,042.

The commission finds \$5,042 to be a fair and reasonable value for the state's rights, title and interest in the surplus land.

NOW, THEREFORE, in accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the commission finds that the surplus land is no longer needed for a state highway purpose and that the value of the surplus land is less than \$10,000 and authorizes the executive director to execute a proper instrument conveying all of the state's rights, title and interest in the surplus land to Oak Grove Mining Company LLC for \$5,042; SAVE AND EXCEPT, however, there is excepted and reserved herefrom all of the state's rights, titles and interests, if any, in and to all of the oil, gas, sulphur and other minerals, of every kind and character, in, on, under and that may be produced from the surplus land.

Note: Exhibit A on file with minute order clerk.

c. Right of Way Dispositions and Donations (continued)

(4) Travis County – I-35 at Yager Lane in Austin – Consider the exchange of right of way (MO)

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ROW

In TRAVIS COUNTY, on INTERSTATE 35, the State of Texas (state) acquired certain land for a state highway purpose by instruments recorded in Volume 2178, Page 166, and Volume 2209, Page 224, Deed Records of Travis County, Texas.

A portion of the land (surplus land), described in Exhibits E and F, is no longer needed for a state highway purpose.

In accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the Texas Transportation Commission (commission) may recommend the exchange of surplus land as whole or partial consideration for other land needed for a state highway purpose.

Instruments conveying land and property interests needed for a state highway purpose (new land), described in Exhibits A, B, C and D, have been executed by Quentin Ltd., a Texas limited partnership (the owner), the landowner abutting the surplus land. The owner has requested that the surplus land be conveyed to the partnership. The state will pay the owner the \$321,949 cash difference in value between the value of the new land and the surplus land pursuant to an executed exchange agreement.

It is the opinion of the commission that it is proper and correct that the state convey the surplus land to the owner in exchange and as partial consideration for the conveyance of the new land to the state and the state's cash payment to the owner of \$321,949.

NOW, THEREFORE, the commission finds that the surplus land is no longer needed for a state highway purpose and recommends, subject to approval by the attorney general, that the Governor of Texas execute a proper instrument conveying all of the state's rights, title and interest in the surplus land to the owner in exchange and as partial consideration for the conveyance of the new land to the state and the state's cash payment of \$321,949 to the owner; SAVE AND EXCEPT, however, there is excepted and reserved herefrom all of the state's rights, titles and interests, if any, in and to all of the oil, gas, sulphur and other minerals, of every kind and character, in, on, under and that may be produced from the surplus land.

Note: Exhibits A, B, C, and D on file with minute order clerk.

d. Speed Zones

Various Counties – Establish or alter regulatory and construction speed zones on various sections of highways in the state (MO)

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TRF

Transportation Code, §545.352 establishes prima facie reasonable and prudent speed limits for various categories of public roads, streets and highways.

Transportation Code, §545.353 empowers the Texas Transportation Commission (commission) to alter those prima facie limits on any part of the state highway system as determined from the results of an engineering and traffic investigation conducted according to the procedures adopted by the commission.

The Texas Department of Transportation (department) has conducted the prescribed engineering and traffic investigations to determine reasonable and safe prima facie maximum speed limits for those segments of the state highway system shown in Exhibits A and B.

Exhibit A lists construction speed zones in effect when signs are displayed within construction projects. The completion and/or acceptance of each project shall cancel the provision of this minute order applying to said project and any remaining construction speed zone signs shall be removed.

Exhibit B lists speed zones for sections of highways where engineering and traffic investigations justify the need to alter the speeds.

IT IS THEREFORE ORDERED by the commission that the reasonable and safe prima facie maximum speed limits determined in accordance with the department's "Procedures for Establishing Speed Zones" and shown on the attached Exhibits A and B are declared as tabulated in those exhibits. The executive director is directed to implement this order for control and enforcement purposes by the erection of appropriate signs showing the prima facie maximum speed limits.

IT IS FURTHER ORDERED that a provision of any prior order by the commission which is in conflict with a provision of this order is superseded to the extent of that conflict.

Note: Exhibits A and B on file with minute order clerk.

ITEM 13. Executive Session Pursuant to Government Code, Chapter 551

- a. **Section 551.071** - Consultation with and advice from legal counsel
- b. **Section 551.072** - Discussion of real property purchase, exchange, lease, donations
- c. **Section 551.074** - Discuss the evaluation, designation, reassignment, and duties of department personnel, including district engineers, division directors, and office directors.

The commission did not meet in executive session.

OPEN COMMENT PERIOD

The commission did not receive any open comments.

The regular meeting of the Texas Transportation Commission adjourned at 1:20 p.m.

APPROVED:

Ric Williamson, Chair
Texas Transportation Commission

xxx

I hereby certify that the above and foregoing pages constitute the full, true and correct record of all proceedings and official records of the Texas Transportation Commission at its regular meeting on November 15, 2007, in Austin, Texas.

Dee Hernandez, Chief Minute Clerk
Texas Department of Transportation